

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:20-cr-114-JES-MRM

CASEY DAVID CROWTHER

PROPOSED JURY INSTRUCTIONS

The United States of America, by Karin Hoppmann, Acting United States Attorney for the Middle District of Florida, requests that the following jury instructions be given during the Court's charge at the end of the trial of the above-named second superseding indictment.

Respectfully submitted,

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Acting United States Attorney

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U.S. v. Casey David Crowther

Case No. 2:20-cr-114-JES-MRM

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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P1
Preliminary Instructions

Members of the Jury:

Now that you have been sworn, I need to explain some basic principles about a criminal trial and your duty as jurors. These are preliminary instructions. At the end of the trial I will give you more detailed instructions.

Duty of jury:

It will be your duty to decide what happened so you can determine whether the defendant is guilty or not guilty of the crime charged in the second superseding indictment. At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you even if you do not agree with the law.

What is evidence:

You must decide the case solely on the evidence presented here in the courtroom. Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion. Some evidence proves a fact indirectly, such as a witness who saw wet grass outside and people walking into the courthouse carrying wet umbrellas. Indirect evidence, sometimes called circumstantial evidence, is simply a chain of circumstances that proves a fact. As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or

disbelieve either kind and should give every piece of evidence whatever weight you think it deserves.

What is not evidence:

Certain things are not evidence and must not be considered. I will list them for you now:

- Statements and arguments of the lawyers. In their opening statements and closing arguments, the lawyers will discuss the case, but their remarks are not evidence;
- Questions and objections of the lawyers. The lawyers' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because a lawyer's question suggests that it is. For instance, if a lawyer asks a witness, "you saw the defendant hit his sister, didn't you?" – that question is no evidence whatsoever of what the witness saw or what the defendant did, unless the witness agrees with it.

There are rules of evidence that control what can be received into evidence.

When a lawyer asks a question or offers an exhibit and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, then the question may be answered or the exhibit received. If I sustain the objection, then the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and not try to guess what the answer would have been.

Sometimes I may order that evidence be stricken and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider that evidence.

Some evidence is admitted only for a limited purpose. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and no other.

Credibility of witnesses:

In reaching your verdict, you may have to decide what testimony to believe and what testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

- The opportunity and ability of the witness to see or hear or know the things testified to;
- The witness's memory;
- The witness's manner while testifying;
- The witness's interest in the outcome of the case and any bias or prejudice;
- Whether other evidence contradicted the witness's testimony;
- The reasonableness of the witness's testimony in light of all the evidence; and
- Any other factors that bear on believability.

I will give you additional guidelines for determining credibility of witnesses at the end of the case.

Rules for criminal cases:

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, the defendant is presumed innocent until proven guilty. The second superseding indictment against the defendant brought by the government is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his innocence or to present any evidence, or to testify. Since the defendant has the right to remain silent and may choose whether to testify, you cannot legally put any weight on a defendant's choice not to testify. It is not evidence.

Third, the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that the level of proof required is high.

Conduct of the jury:

Our law requires jurors to follow certain instructions regarding their personal conduct in order to help assure a just and fair trial. I will now give you those instructions:

1. Do not talk, either among yourselves or with anyone else, about anything related to the case. You may tell the people with whom you live and your employer that you are a juror and give them information about when you will be required to be in court, but you may not discuss with them or anyone else anything related to the case.
2. Do not, at any time during the trial, request, accept, agree to accept, or discuss with any person, any type of payment or benefit in return for supplying any information about the trial.

3. You must promptly tell me about any incident you know of involving an attempt by any person to improperly influence you or any member of the jury.
4. Do not visit or view the premises or place where the charged crime was allegedly committed, or any other premises or place involved in the case. And you must not use Internet maps or Google Earth or any other program or device to search for a view of any location discussed in the testimony.
5. Do not read, watch, or listen to any accounts or discussions related to the case which may be reported by newspapers, television, radio, the Internet, or any other news media.
6. Do not attempt to research any fact, issue, or law related to this case, whether by discussions with others, by library or Internet research, or by any other means or source.

In this age of instant electronic communication and research, I want to emphasize that in addition to not talking face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, Internet chat, chat rooms, blogs, or social-networking websites such as Facebook, My Space, or Twitter.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also must not use Google or otherwise search for any information about the case, or the law that applies to the case, or the people involved in the case, including the defendant, the witnesses, the lawyers, or the judge. It is important that you understand why these rules exist and why they are so important:

Our law does not permit jurors to talk with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair – no one else is so qualified.

Our law also does not permit jurors to talk among themselves about the case until the court tells them to begin deliberations, because premature discussions can lead to a premature final decision.

Our law also does not permit you to visit a place discussed in the testimony. First, you can't be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror. As a witness, you may now have a mistaken view of the scene that neither party may have a chance to correct. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the testimony and other evidence presented in this courtroom. Also, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me, and not from any other source. It wouldn't be fair to the parties for you to base your decision on some reporter's view or opinion, or upon other information you acquire outside the courtroom.

These rules are designed to help guarantee a fair trial, and our law accordingly sets forth serious consequences if the rules are not followed. I trust that you understand and appreciate the importance of following these rules, and in accord with your oath and promise, I know you will do so.

Taking notes:

Moving on now, if you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by witnesses. When you leave the courtroom, your notes should be left in the jury room. Whether or not you take notes, you should rely on your own memory of what was said. Notes are to assist your memory only. They are not entitled to any greater weight than your memory or impression about the testimony.

Course of the trial:

The trial will now begin. First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor argument.

The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case, the defendant may, if he wishes, present witnesses whom the government may cross-examine. After all the evidence is in, the attorneys will present their closing arguments to summarize and

interpret the evidence for you, and I will instruct you on the law. After that, you will go to the jury room to decide your verdict.

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CASE NO. 2:20-cr-114-JES-MRM

CASEY DAVID CROWTHER

COURT'S INSTRUCTIONS
TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

B2.2

**The Duty to Follow Instructions and the Presumption Of Innocence
When a Defendant Does Not Testify**

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The second superseding indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. A Defendant does not have to testify, and if the Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

B3

Definition of “Reasonable Doubt”

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any “reasonable doubt” concerning the Defendant's guilt.

A “reasonable doubt” is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

“Proof beyond a reasonable doubt” is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

B4
Consideration of Direct and Circumstantial Evidence;
Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

B5

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

B6.1

Impeachment of Witnesses Because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

S4.1
Similar Acts Evidence
(Rule 404(b), Fed. R. Evid.)

During the trial, you heard evidence of acts allegedly done by the Defendant on other occasions that may be similar to acts with which the Defendant is currently charged. You must not consider any of this evidence to decide whether the Defendant engaged in the activity alleged in the second superseding indictment. This evidence is admitted and may be considered by you for the limited purpose of assisting you in determining whether the Defendant had the state of mind or intent necessary to commit the crime charged in the indictment, or the Defendant committed the acts charged in the indictment by accident or mistake.

S5
Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

S7
Aiding and Abetting; Agency
18 U.S.C. § 2

It's possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others.

A Defendant "aids and abets" a person if the Defendant intentionally joins with the person to commit a crime.

A Defendant is criminally responsible for the acts of another person if the Defendant aids and abets the other person. A Defendant is also responsible if the Defendant willfully directs or authorizes the acts of an agent, employee, or other associate.

But finding that a Defendant is criminally responsible for the acts of another person requires proof that the Defendant intentionally associated with or participated in the crime – not just proof that the Defendant was simply present at the scene of a crime or knew about it.

In other words, you must find beyond a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

B8

Introduction to Offense Instructions

The second superseding indictment charges six separate crimes, called “counts,” against the Defendant. Each count has a number. You’ll be given a copy of the second superseding indictment to refer to during your deliberations.

Counts one through six charge that the Defendant committed what are called “substantive offenses,” specifically bank fraud, false statement to a financial institution, and illegal monetary transactions. I will explain the law governing those substantive offenses in a moment.

B8.1
Conjunctively Charged Counts

Where a statute specifies multiple alternative ways in which an offense may be committed, the second superseding indictment may allege the multiple ways in the conjunctive, that is, by using the word “and.” If only one of the alternatives is proved beyond a reasonable doubt, that is sufficient for conviction, so long as you agree unanimously as to that alternative.

B9.2
On or About a Particular Date; Knowingly

You'll see that the second superseding indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

B10.2

**Caution: Punishment
(Single Defendant, Multiple Counts)**

Each count of the second superseding indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial only for the specific crimes charged in the second superseding indictment. You're here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

B11
Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

B12
Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

O52
Bank Fraud
18 U.S.C. § 1344

It's a Federal crime to carry out or attempt to carry out a scheme to defraud a financial institution, or to get money or property owned or controlled by a financial institution by using false pretenses, representations, or promises.

The second superseding indictment alleges two counts of bank fraud, in Count One and in Count Five.

The Defendant can be found guilty of Count One only if all the following facts are proved beyond a reasonable doubt:

- (1) the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution or a scheme to get money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;
- (2) the false or fraudulent pretenses, representations, or promises were material;
- (3) the Defendant intended to defraud the financial institution; and
- (4) the financial institution was federally insured.

The Defendant can be found guilty of Count Five only if all the following facts are proved beyond a reasonable doubt:

- (1) the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution or a scheme to get money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;

- (2) the false or fraudulent pretenses, representations, or promises were material;
- (3) the Defendant intended to defraud the financial institution; and
- (4) the financial institution was a mortgage lending business.

A “scheme to defraud” includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises relating to a material fact.

A statement or representation is “false” or “fraudulent” if it is about a material fact that the speaker knows is untrue or makes with reckless indifference as to the truth and makes with intent to defraud. A statement or representation may be “false” or “fraudulent” when it’s a half truth or effectively conceals a material fact and is made with the intent to defraud.

A “material fact” is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is “material” if it has the capacity or natural tendency to influence a person’s decision. It doesn’t matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

To act with “intent to defraud” means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss or injury. Proving intent to deceive alone, without the intent to cause loss or injury, is not sufficient to prove intent to defraud.

A “mortgage lending business” means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.

The Government doesn’t have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn’t have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the Defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the indictment.

ANNOTATIONS AND COMMENTS

This instruction has been modified from the pattern jury instruction in two ways: (1) it includes separate elements for each count, owing to the different types of financial institutions at issue in those charges, and (2) it defines a “mortgage lending business” to account for the presence of that type of business in this case and which is not otherwise found in the pattern instruction.

In 2009, Congress expanded the definition of “financial institution” to include a mortgage lending business under 18 U.S.C. § 20(10). *United States v. Rabuffo*, 716 Fed. Appx. 888, 897 (11th Cir. 2017) (citing *United States v. Stapleton*, 455 Fed. Appx 896, 899 n.1 (11th Cir. 2012). Further, 18 U.S.C § 27 defines a mortgage lending business as “an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.”

O39
False Statement to Lending Institution
18 U.S.C. § 1014

It's a Federal crime to knowingly make a false statement or report to a federally insured financial institution or a mortgage lending business.

The second superseding indictment alleges two counts of false statement to a lending institution, in Count Two and in Count Six.

For you to find the defendant guilty of Count Two you must be convinced that the government has proven each of these things beyond a reasonable doubt:

- (1) the Defendant made a false statement or report;
- (2) the Defendant did so knowingly and with intent to influence an action of the institution described in the second superseding indictment regarding an application, advance, commitment, or loan, or a change or extension to any of those, and
- (3) the deposits of the institution were insured by the Federal Deposit Insurance Corporation.

For you to find the defendant guilty of Count Six you must be convinced that the government has proven each of these things beyond a reasonable doubt:

- (1) the Defendant made a false statement or report;
- (2) the Defendant did so knowingly and with intent to influence an action of the institution described in the second superseding indictment regarding an application, advance, commitment, or loan, or a change or extension to any of those, and
- (3) the institution was a mortgage lending business.

A statement or report is “false” if it is untrue when made and the person making it knows it is untrue.

The heart of the crime is the attempt to influence the action of the institution by knowingly making a false statement. The Government does not have to prove that the institution was actually influenced or misled.

A “mortgage lending business” means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.

ANNOTATIONS AND COMMENTS

This instruction has been modified from the pattern jury instruction in two ways: (1) it includes separate elements for each count, owing to the different types of financial institutions at issue in those charges, and (2) it defines a “mortgage lending business” to account for the presence of that type of business in this case and which is not otherwise found in the pattern instruction.

Congress amended 18 U.S.C. § 1014 in 2009 to cover “mortgage lending businesses.” Fraud Enforcement and Recovery Act of 2009 (FERA), Pub.L.No. 111-21, §§ 2(c)(2), 4(f).

In 2009, Congress expanded the definition of “financial institution” to include a mortgage lending business under 18 U.S.C. § 20(10). *United States v. Rabuffo*, 716 Fed. Appx. 888, 897 (11th Cir. 2017) (citing *United States v. Stapleton*, 455 Fed. Appx 896, 899 n.1 (11th Cir. 2012). Further, 18 U.S.C § 27 defines a mortgage lending business as “an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.”

O74.6
Illegal Monetary Transaction
18 U.S.C. § 1957

It's a Federal crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering.

The Defendant can be found guilty of this offense only if all the following are proved beyond a reasonable doubt;

- (1) the Defendant knowingly engaged or attempted to engage in a monetary transaction;
- (2) the Defendant knew the transaction involved property or funds that were the proceeds of some criminal activity;
- (3) the property had a value of more than \$10,000;
- (4) the property was in fact proceeds of bank fraud as alleged in Count One of the Second Superseding Indictment; and
- (5) the transaction took place in the United States.

The term "monetary transaction" means the transfer or exchange of funds by, through, or to a financial institution in a way that affects interstate commerce.

A "financial institution" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC).

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of the activity.

It doesn't matter whether the Defendant knew the precise nature of the crime or that the property came from committing bank fraud. But the Government must

prove that the Defendant knew that the property involved in the monetary transaction was obtained or derived from committing some crime.

Also it doesn't matter whether all the property involved was derived from a crime. The Government only has to prove that \$10,000 worth of the property was obtained or derived from committing a crime.

S17
Good-Faith Defense

“Good faith” is a complete defense to a charge that requires intent to defraud. A defendant isn’t required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt.

An honestly held opinion or an honestly formed belief cannot be fraudulent intent – even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness can’t establish fraudulent intent.

But an honest belief that a business venture would ultimately succeed doesn’t constitute good faith if the Defendant intended to deceive others by making representations the Defendant knew to be false or fraudulent.